

NOTICE

Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

RONALD L. O'NEIL,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11369
Trial Court No. 1CR-11-196 CR

MEMORANDUM OPINION

No. 6231 — August 26, 2015

Appeal from the Superior Court, First Judicial District, Craig,
David V. George, Judge.

Appearances: Megan Webb, Assistant Public Defender, and
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.
Nancy R. Simel, Assistant Attorney General, Office of Criminal
Appeals, Anchorage, and Craig W. Richards, Attorney General,
Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, and Allard and Kossler,
Judges.

Judge ALLARD.

Following a jury trial, Ronald L. O'Neil was convicted of manslaughter for
killing his neighbor.¹ On appeal, O'Neil claims that the State did not prove beyond a

¹ See AS 11.41.120(a)(1).

reasonable doubt that he did not act in self-defense. He also claims that the superior court failed to correct errors in his presentence report.

We conclude that, when viewed in the light most favorable to upholding the jury's verdict, the evidence was legally sufficient to prove beyond a reasonable doubt that O'Neil did not act in self-defense. We further conclude that a remand is necessary to allow the superior court to correct the presentence report.

Accordingly, we affirm O'Neil's conviction but remand his case to the superior court for further proceedings consistent with this decision.

Factual background and prior proceedings

Tracy Simpson, O'Neil's neighbor, was found beaten to death in O'Neil's float house. Simpson had spent the day drinking alcohol with O'Neil. Forensic evidence established that Simpson had been struck numerous times in the face while lying on the floor on his back and that he died from multiple blunt-force strikes to his head. Based on the forensic evidence, the State charged O'Neil with second-degree murder and manslaughter, alleging that O'Neil had used his fists to beat Simpson to death.

Both O'Neil and Simpson were extremely intoxicated on the day Simpson died. O'Neil told the troopers that he was an eleven on a drunkenness scale of one to ten. Simpson's blood alcohol content was .286 near the time of death. Prior to trial, O'Neil steadfastly maintained that he could not remember what happened. He told the troopers and other investigators that he recalled sitting at the table drinking with Simpson, but he could not remember anything else until he found Simpson's body.

At trial, however, O'Neil testified that his memory had improved and that he could now remember some of the events that occurred the day Simpson was killed. O'Neil recalled stepping out of the float house to go to the bathroom (the float house had

an outhouse). According to O’Neil, when he reentered the float house, Simpson had a “scary look on his face.” When O’Neil asked Simpson what was wrong, “all of a sudden ... there was a white flash,” and O’Neil stumbled backwards because Simpson had hit him. O’Neil testified that Simpson then came at him again, and O’Neil deflected a blow with his arm and fell backwards onto a television, knocking it off its stand.

O’Neil stated that he believed he had been knocked unconscious by this fall. When he regained consciousness, he was on his back on the floor and Simpson was straddling him. O’Neil said he was able to get Simpson off by pushing up with his hips and biting Simpson on his side. O’Neil said that after he got up, he told Simpson to get out of the house. O’Neil then went to bed in his bedroom. Sometime later, when it was dark, O’Neil got up, put the television back on its stand, and found Simpson’s dead body.

During closing arguments, O’Neil’s attorney argued that one of O’Neil’s neighbors came into the float house and killed Simpson while O’Neil was passed out in his bed. The defense attorney also argued that the State had not met its burden of proving beyond a reasonable doubt that whoever killed Simpson did not act in self-defense. The attorney asserted that if O’Neil was responsible, there were many reasons to believe that he was acting in self-defense given Simpson’s earlier actions.

The jury acquitted O’Neil of second-degree murder but convicted him of manslaughter. (The jury also acquitted O’Neil of a separate charge of tampering with evidence, which is not at issue in this appeal.)

The evidence supporting O’Neil’s conviction is legally sufficient

On appeal, O’Neil argues that the evidence presented at trial was legally insufficient to support his conviction for manslaughter. Specifically, O’Neil argues that,

when confronted with his trial testimony, no reasonable jury could believe that the State had proven beyond a reasonable doubt that O’Neil did not act in self-defense.

When an appellate court reviews a claim of legal insufficiency on appeal, the court views the evidence — and all reasonable inferences from that evidence — in the light most favorable to upholding the verdict.² The court then asks whether, viewing the evidence in this light, a fair-minded juror could reasonably have concluded that the defendant was guilty beyond a reasonable doubt.³ The appellate court does not re-weigh the evidence or assess witness credibility on appeal.⁴ Those are matters for the jury to decide.

Viewing the evidence at O’Neil’s trial in the light most favorable to upholding the manslaughter conviction, we conclude that a fair-minded juror could reasonably conclude that the State had met its burden in this case. The forensic evidence established that Simpson was killed by repeated blows to his face while he was lying on his back.

In addition, the jury was in a position to judge O’Neil’s credibility for itself, and the jury could have reasonably rejected O’Neil’s trial testimony in whole or in part — including O’Neil’s claim that Simpson was the aggressor in the earlier altercation. Moreover, even under O’Neil’s account, there was still no evidence that Simpson had

² *Iyapana v. State*, 284 P.3d 841, 848-49 (Alaska App. 2012).

³ *Id.* at 849.

⁴ *Id.*

a weapon or ever threatened to kill O’Neil. Nor was there any evidence that Simpson had renewed his attack on O’Neil.⁵

We therefore conclude that, when viewed in the light most favorable to upholding the verdict, the evidence at trial was legally sufficient to support the jury’s verdict of manslaughter and its conclusion that the State had proven beyond a reasonable doubt that O’Neil did not act in self-defense.

O’Neil’s challenges to the presentence report

Prior to sentencing, O’Neil asked the superior court to make the following changes to his presentence report:

- Delete the portion of the report stating that some jurors had voted to convict O’Neil of second-degree murder but others had only voted to convict him of manslaughter;
- Delete the portion of the report stating that O’Neil has a scar on his forehead because he does not have a scar;
- Amend the portion of the report stating that O’Neil said, “I killed him,” when the neighbor who found Simpson’s body arrived to O’Neil saying, “I must have killed him”;
- Amend the portion of the report stating that Simpson’s body was transported to a dock to state that it was transported to a landing;
- Delete the portion of the report that stated that O’Neil had committed four traffic violations at various unspecified times;

⁵ See AS 11.81.335(a) (providing that a person may use deadly force in self-defense where the person reasonably believes that use of deadly force is necessary for self-defense against death, serious injury, or several other enumerated serious felonies).

- Delete the portion of the report that stated that O’Neil may have used narcotics on the day that he killed Simpson.

The superior court agreed to all but the last two requests. However, the court failed to update the presentence report to reflect these agreed-upon deletions.

On appeal, the State concedes that O’Neil’s case must be remanded for the superior court to make the appropriate changes to O’Neil’s presentence report.⁶ This concession is well-founded.⁷

O’Neil asserts that the remand should also include deletion of the alleged traffic violations and the alleged narcotic use. The State agrees that the traffic information should be deleted but disagrees that the alleged narcotic use should be deleted.

We agree with the parties that the superior court erred in failing to delete the reference to O’Neil’s alleged traffic violations. The superior court refused to delete this portion of the report because it found that the traffic information was of “no consequence” to O’Neil’s sentencing. But, as the State now concedes, under Alaska Criminal Rule 32.1(f)(5), “if the [sentencing judge] determines that the disputed assertion [in the presentence report] is not relevant to its sentencing decision so that resolution of the dispute is not warranted, the court shall delete the assertion from the report without making any finding.”⁸ On remand, therefore, we direct the superior court to delete this portion of the presentence report.

⁶ See *Davison v. State*, 307 P.3d 1, 2 (Alaska App. 2013) (because many significant decisions regarding a defendant’s future are made based on presentence reports, “care must be taken to ensure that [presentence] reports are as accurate as possible”) (quoting *Cragg v. State*, 957 P.2d 1365, 1367-68 (Alaska App. 1998)).

⁷ See *Marks v. State*, 496 P.2d 66, 67-68 (Alaska 1972) (an appellate court must independently assess any concession of error by the State in a criminal case).

⁸ See *Davison*, 307 P.3d at 2 (interpreting Alaska R. Crim. P. 32.1(f)(5)).

We do not agree, however, with O’Neil’s claim that the reference to possible narcotics use should be deleted. When O’Neil objected to this portion of the presentence report, the court amended the report to read “the defendant exercised poor judgment by consuming hard alcohol, *perhaps* in combination with [a] narcotic drug” (emphasis added). In doing so, the court specifically noted that there was evidence that O’Neil had access to Vicodin at the time and that he may have ingested some.

In the proceedings below, O’Neil’s attorney agreed to the court’s amendment and did not make any further objections to this portion of the presentence report. Our review is therefore limited to plain error.⁹ Given the court’s specific finding regarding O’Neil’s access to narcotics and possible narcotic use, we do not find plain error here.

Conclusion

The judgment of the superior court is AFFIRMED. O’Neil’s case is REMANDED to the superior court so that the court can make the corrections to O’Neil’s presentence report detailed in this decision.

⁹ See *Moreno v. State*, 341 P.3d 1134, 1136 (Alaska 2015) (when a party fails to object to a trial error, appellate courts will review only for plain error).